

REMARKS/ARGUMENTS

Claim 2-6 and 8-21 are presented for examination. Claim 7 has been cancelled.

Claim 21 is new and requires that the “inner wall surfaces formed by said top part, neck and bottom part in combination define a single substantially uninterrupted shape between said top and bottom surfaces, said shape being selected from the group consisting of linear, arcuate and chevron shapes.” Figs. 3 and 4 illustrate chevron shapes, Figs. 5 and 6 illustrate arcuate shapes (as do Figs. 1 and 2), and Figs. 7 and 8 illustrate linear shapes. Figs. 9 through 12 also illustrate chevron shapes.

Independent Claims 12 and 16-19 have been amended to correct typographical, grammatical and clerical errors as well as to ensure that the terms employed therein have antecedent basis in the claims. Dependent Claim 15 has been amended to clarify that the plate rim extends over and partially around only one of the holder edges. Dependent Claim 20 has been amended to clarify that the sticky material is positioned “for stabilizing plates in said recesses.”

Claims 1-6, 8-11 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amberg.

To establish a *prima facie* case for obviousness under 35 U.S.C. 103(a), the Examiner must establish that (a) there is a suggestion or motivation in the cited reference or in generally available knowledge, to modify the reference to provide the claimed invention; (b) there must be a reasonable expectation of success; and (c) the prior art reference must teach or suggest every claim limitation. *In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); *In re Royka and Martin*, 180 USPQ 580, 582 (CCPA 1974).

Amberg is cited by the Examiner for teaching a holder having all the elements of the rejected claims except that the Amberg holder is not reversible. The rejection asserts that it would be obvious to invert the Amberg holder so that the bottom edge becomes the top edge.

This assertion is respectfully traversed because the Amberg holder is not intended to be inverted and, if inverted, will not function as a paper plate holder. The Amberg paper plate holder appears to be of the type long used for ice cream sundaes, with a shallow recess in the base and a relatively deep tapered recess in the top. As seen in Amberg the conical walls at the top extend the full height of the conical recess to the top edge of the rim; however, in the base the bottom edge changes abruptly from tapered to a straight cylindrical rim, as seen in Figs. 1 and 5-6. If the Amberg holder were inverted so that the shallow bottom recess were now at the top, and a typical conical paper plate were inserted in this shallow bottom recess, the paper plate could not lie flat against and be supported by the recess walls. Also, such a paper plate would be unstable and would tip to an awkward angle with risk that some food would fall out. In summary, Amberg does not disclose structure as claimed, and the Amberg holder was not intended to be inverted and would not function in that manner. Thus, there is no suggestion or motivation in Amberg to modify the disclosure therein, and consequently, it is believed to be incorrect to argue obviousness under 35 U.S.C. 103 to invert the Amberg holder as a basis for rejecting any of the present claims, all of which define a truly reversible holder.

Applicant notes that there is no rejection under Section 102 for anticipation by Amberg. In a Section 102 rejection it is sufficient that the structure shown in the reference can be used as required by Applicant's claims. It is not necessary that the anticipating reference teach use of the structure in the manner taught by the claims. However, in the present Section 103 obviousness rejection it is improper to assert that it would have been obvious for one or more persons skilled in the art at the time the invention was made to have inverted the holder structure where such an inversion is nowhere taught or suggested by the reference.

Attention is now directed to the structure specifically claimed herein. The present invention is a reversible plate holder characterized by a novel form and simplicity that is not disclosed or suggested in any of the cited prior art. New Claim 17, for example, recites not only that the holder is reversible, but that the top and bottom wall surfaces (of the top and bottom conical recesses) define a substantially uninterrupted conical shape from said neck to said top and bottom edges of said top and bottom truncated conical recesses, respectively. The structure thus defined is totally different from Amberg; the claim does not read on Amberg and cannot be obvious from Amberg under 35 U.S.C. 103.

Independent Claims 18, 19, 12 and 16 and dependent Claims 2-11, 13 and 14 all include the same structural limitation of a "substantially uninterrupted conical shape," and thus are similarly patentably distinguishable over Amberg.

On page 3 of the Office Action the rejection based on Amberg focuses on Claims 2 and 6, in view of Amberg's Fig. 1 showing a tube having uniform wall thickness. This

structural feature of Amberg does not render Claims 2 and 6 obvious because these claims still include the above-mentioned limitation of a “substantially uninterrupted conical shape.”

The Office Action includes on page 3 a rejection of Claim 20 under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Willinger. The latter reference is presumably cited for its teaching of a sticky material. However, Claim 20 specifically requires “a layer of sticky material on said inner wall surfaces of said top and bottom conical recesses for stabilizing said plates in said recesses.” By way of contrast, Willinger teaches that “a layer of non-skid layer material 18 on the undersurface of the pet bowl is desirable in order to address the drawbacks of utilizing a lightweight plastic bowl for pets” (page 2, lines 54-57). The purpose of the material 18 is to provide “a greater frictional force between the bowl 10 and the ground” (col. 2, lines 64-67), not between the bowl and the plate as required by Claim 20.

While the Willinger reference teaches that the material 18 may also extend “upward to run midway of the side wall 14,” thereby to provide a greater bond between the material 18 and the bowl (col. 3, line 33-42), the material 18 always remains on the outer surface of the bowl (whether it be the bottom or the sidewall) and therefore not on “inner wall surfaces” where it would be required in order to stabilize a plate within the recess. Thus Willinger may teach a sticky material 18, but he does not teach it being placed “on said inner wall surfaces of said top and bottom conical recesses for stabilizing plates in said recesses,” as required by Claim 20.

The Office Action includes on page 4 a rejection of Claims 12-14 under 35 U.S.C. 103(a) as being unpatentable over Amberg in view of Connery. The rejection acknowledges that Amberg fails to teach a base for supporting the holder. Connery is cited for teaching a rectangular base (700) having a circular opening (730) for supporting the holder. However, the combination of these two references will not satisfy or render obvious the claimed structure claims of the present invention for the reasons expressed above -- particularly, that neither reference teaches or suggests the limitation of a "substantially uninterrupted conical shape" of the top and bottom recesses. Thus, a prima facie case of obviousness has not been presented.

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Applicant respectfully submits that the Examiner apparently misunderstood the argument presented in the previous Amendment. The paragraph bridging pages 5 and 6 of the present Office Action clearly show the Examiner's belief that the Applicant is predicated the failure of Amberg to provide "a substantial uninterrupted conical shape from the neck to the top and bottom" surfaces, respectively, on the presence of Amberg's resilient leaf spring element 34. This is simply not the case. What precludes "a substantially uninterrupted conical shape" is the presence of the vertical rim at the bottom part of the holder. If the holder were inverted, as suggested by the Examiner, the paper plate could not conform to the inner wall surfaces because the bottom rim, now at the top of the holder, would force space (i.e., a void) to develop between the outer surface of the plate/cup and the inner surface of the conical recess/vertical rim. Accordingly, Applicant respectfully submits that the Amberg reference fails to provide

Applicant's claimed "a substantially uninterrupted conical shape from the neck to the top and bottom surface."

In any event, the vertical rim at the bottom of the Amberg holder precludes "the inner wall surfaces formed by said top part, neck and bottom part in combination [defining] a single substantially uninterrupted shape between said top and bottom surfaces, said shape being selected from the group consisting of linear, arcuate and chevron shapes," as required by Claim 21.

In view of the amendments herein and the structural differences set forth with regard to the cited references, it is believed that all the currently pending claims are patentable. Accordingly, reconsideration of the rejection and issuance of a favorable action are respectfully requested.

If an extension of time is required to enable this document to be timely filed and there is no separate Request for Extension of Time, this document is to be construed as also constituting a Request for Extension of Time Under 37 C.F.R. §1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such a Request for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§1.16 and 1.17 and not submitted herewith should be charged to the Deposit

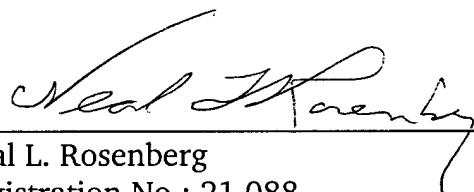
Appl. No. 10/643,525
Amdt. dated April 26, 2005
Reply to Office Action of August 6, 2004

Account of the undersigned attorneys, Account No. 01-1785; any refund should be credited to the same account. One copy of this document is enclosed.

Respectfully submitted

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Dated: New York, New York
April 27, 2005

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